

BEFORE THE TENNESSEE REGULATORY AUTHORITY

REC'D TR
REGULATORY AUTH.

NASHVILLE, TENNESSEE

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CLERK OF THE
EXECUTIVE SECRETARY

IN RE: PETITION BY ICG TELECOM)
GROUP INC. FOR ARBITRATION)
OF AN INTERCONNECTION)
AGREEMENT WITH BELL SOUTH)
TELECOMMUNICATIONS, INC.)
PURSUANT TO SECTION 252 (b))
OF THE TELECOMMUNICATIONS)
ACT OF 1996)

DOCKET NO. 99-00377

BRIEF OF ICG ON PRE-HEARING ISSUES

At the direction of the Hearing Officer, ICG Telecom Group, Inc. ("ICG") submits the following brief to address issues raised during the pre-hearing conference on August 25, 1999.

I. ICG will abide by the arbitration rules (TRA Rules 1220-5-1 through 1120-5-3) which were used by the Tennessee Regulatory Authority ("TRA") during the AT&T and MCI arbitration proceedings.

II. ICG has no objection to the participation by the TRA staff in this arbitration proceeding.

III. Under separate cover, ICG and BellSouth Telecommunications, Inc. ("BellSouth") are submitting a proprietary agreement in this docket. The agreement is modeled on the Protective Order adopted by the TRA in Docket 97-01262 (the permanent prices proceeding).

Under separate cover, ICG and BellSouth are submitting an agreed waiver extending until February 2, 2000, the period of time within which this arbitration must be concluded.

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IV. The original wording of Issue 3, as stated in ICG's Petition, read, "Should BellSouth be required to make available as UNEs packet-switching capabilities, including, but not limited to: (a) . . ." At the pre-hearing conference, Issue 3 was re-worded to read, "When, how, and at what rate should BellSouth make available packet-switching capabilities as UNEs throughout the term of the contract, including (a) . . ."

At the conference, BellSouth questioned whether the revised language materially changed the scope of Issue 3. It is not clear whether BellSouth intends to pursue that argument. In any event, the revised wording only clarifies what was meant in the original language.

Issue 3 concerns whether BellSouth should "make available" the requested features. The revised language merely explains what "make available" was intended to mean, *i.e.*, "when, how, and at what rate" should BellSouth offer these features. Issue 3 has not been materially changed or expanded by this clarification.

V. Issue 5 in the Petition and Issues 19 through 26 all concern whether the TRA should set performance standards for BellSouth and establish mandatory penalties (*i.e.*, liquidated damages) for the violation of those standards.

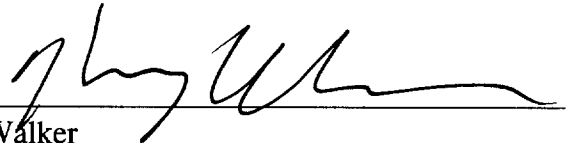
As explained at the pre-hearing conference, ICG will present testimony at the hearing recommending that the TRA, rather than trying to develop Tennessee-specific performance standards, adopt instead the performance standards and penalties recently approved by another state commission. After studying plans recently adopted in California and Texas, ICG has concluded that the Texas Commission plan, which includes detailed performance standards and monetary penalties, is the better proposal. The plan was adopted following an extensive,

workshop-type process. While ICG does not agree with all aspects of the Texas plan, it is the most comprehensive state plan available.

ICG believes that a workshop-type proceeding is the best method for developing state-specific performance standards and penalties. In the absence of such a proceeding now pending in Tennessee, ICG therefore recommends that the TRA adopt, for purposes of this arbitration decision, the Texas plan. A copy of the plan, and an explanation of how the plan addresses the issues raised in this arbitration, will be provided to the Staff and to BellSouth by Thursday, September 9, 1999.

ICG further recommends that the TRA undertake a workshop-type proceeding to develop Tennessee-specific performance standards and damages. Those standards, once finalized, should be applied prospectively to the pending interconnection agreement between ICG and BellSouth.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Henry Walker', is written over a horizontal line.

Henry Walker
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Attorneys for ICG TELECOM GROUP, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Arbitration Petition in the above captioned proceeding has been hand-delivered to the office of Guy Hicks, BellSouth Telecommunications, 333 Commerce St., Suite 2101, Nashville, Tennessee 37201-3300 on this the 7th day of September, 1999.